

**[CHAPTER 443B]**  
**COLLECTION AGENCIES**

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**§443B-1 Definitions.** As used in this chapter:

"Client" means a person who offered or extended credit which created a debt, or to whom a debt is owed, and who engages the professional services of a collection agency. The term does not include any person who receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of a debt for another.

"Collection agency" means any person, whether located within or outside this State, who by oneself or through others offers to undertake or holds oneself out as being able to undertake or does undertake to collect for another person, claims or money due on accounts or other forms of indebtedness for a commission, fixed fee, or a portion of the sums so collected.

"Collection agency" includes:

- (1) Any person using any name other than the person's own in collecting the person's own claims with the intention of conveying, or which tends to convey the impression that a third party has been employed;
- (2) Any person who, in the conduct of the person's business for a fee, regularly repossesses any merchandise or chattels for another; and
- (3) Any person who regularly accepts the assignment of claims or money due on accounts or other forms of indebtedness and brings suits upon the assigned claims or money due on accounts or other forms of indebtedness in the person's own name; provided that any suits shall be initiated and prosecuted by an attorney who shall have been appointed by the assignee.

"Collection agency" does not include licensed attorneys at law acting within the scope of their profession, licensed real estate brokers, and salespersons residing in this State when engaged in the regular practice of their profession, nor banks, trust companies, building and loan associations, savings and loan associations, financial services loan companies, credit unions, companies doing an escrow business, individuals regularly employed on a regular wage or salary in the capacity of credit persons or in other similar capacity for a single employer who is not a collection agency, nor any public officer or any person acting under an order of court.

"Communication" means directly or indirectly conveying information regarding a debt to any person by any means.

"Debt" means any obligation or alleged obligation of a consumer to pay money or other forms of payment arising out of a transaction in which the money, property, insurance, or services, which are the subject of the transaction, are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

"Debtor" means any person or the person's spouse, or reciprocal beneficiary, parent (if the person is a minor), guardian, executor, or administrator obligated or allegedly obligated to pay a debt.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Material change" means any change of circumstance which might affect a collection agency's registration, including the assigning, selling, leasing, encumbering, or other transfer of the rights, privileges, and obligations of a collection agency, whether voluntarily or involuntarily or directly or indirectly, including by transfer of fifty-one per cent of control of any collection agency, whether by change in ownership or otherwise.

"Principal collector" means an individual who has been designated by a collection agency to assume responsibility for the operations and activities of the agency's office in this State.

"Regularly repossesses" means to locate, confiscate, and return merchandise or chattels to a client whenever the client requires service.

"Regular practice" means duties being of the sort or kind that are expected, ordinary, or typical of the profession.

"Regular wage or salary" means the expected, ordinary, or typical payment for employment.

**§443B-2 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall:

- (1) Grant certificates of registration to collection agencies pursuant to this chapter;
- (2) Adopt, amend, or repeal rules as the director deems proper to fully effectuate this chapter;
- (3) Enforce this chapter and the rules relating to collection agencies;
- (4) Fine, suspend, terminate, or revoke any registration for any cause prescribed by this chapter, or for any violation of the rules, and refuse to grant any registration for any cause which would be grounds for revocation, termination, or suspension of a registration;
- (5) Investigate the actions of any person or agency acting or alleged to be acting in the capacity of a registrant under this chapter;
- (6) Order an audit of an account or an unannounced verification of an account's cash balance; and
- (7) Extend the deadlines required under this chapter and the rules; provided that the registrant or applicant meets the conditions and requirements prescribed.

**§443B-3 Registration required.** (a) No collection agency shall collect or attempt to collect any money or any other forms of indebtedness alleged to be due and owing from any person who resides or does business in this State without first registering under this chapter.

- (b) Registration shall include:
  - (1) Submission of a complete application for registration;
  - (2) Submission of a certificate of good standing or a certificate of authority from the business registration division;
  - (3) Payment of appropriate fees;
  - (4) Filing and maintenance of a bond in the amount prescribed in section 443B-5;
  - (5) Maintenance of a regular active business office in the State; and
  - (6) Designation of a principal collector, as prescribed in section 443B-6.
- (c) Any collection agency which has filed a bond with the director and maintained that bond in full force and effect, and which has not filed an application and paid the registration fee within ninety days of June 6, 1987, shall submit an application in the same manner as a new applicant subject to the provisions of sections 443B-4 and 443B-6.

**[§443B-3.5] Exempt out-of-state collection agency.** (a) A collection agency licensed or registered as a collection agency in another state, may apply for designation as an exempt out-of-state collection agency and conduct business in this State pursuant to this section. A collection agency granted designation as an exempt out-of-state collection agency shall be exempt from registration and other regulatory requirements under this chapter except as provided in this section.

(b) A collection agency may apply for designation as an exempt out-of-state collection agency; provided that the collection agency:

- (1) Is licensed or registered as a collection agency under the laws of a state that:
  - (A) Regulates collection agencies; and
  - (B) Does not require a Hawaii collection agency to obtain a license or register to collect debts in that state if the activities of the Hawaii collection agency are limited to those described in paragraphs (2), (3), and (4);
- (2) Is collecting debts on behalf of an out-of-state creditor;
- (3) Does not solicit or engage in collection activities for clients in this State; and
- (4) Only collects debts in this State using interstate communication methods, including telephone, facsimile, or mail.

(c) An applicant for designation as an exempt out-of-state collection agency shall submit the following:

- (1) An application for an out-of-state collection agency exemption as prescribed by the director;
- (2) Verification that:
  - (A) The collection agency holds a current license, permit, or registration to conduct business as a collection agency in another state;
  - (B) Is in good standing with and has complied with the laws of that state, including the maintenance of a bond, if required, and in the amount required by the state; and
  - (C) The collection agency's state of licensure does not require Hawaii collection agencies to register or become licensed in that state before collecting debts in that state;
- (3) An agreement in writing to comply with the requirements of sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19; and
- (4) Payment of the following nonrefundable fees:
  - (A) With the application, and application fee of \$25; and
  - (B) Upon approval of an out-of-state collection agency exemption, the compliance resolution fund fee for collection agencies.

(d) An exempt out-of-state collection agency may renew the exemption biennially by June 30 of each even-numbered year pursuant to subsection (c).

(e) An out-of-state collection agency shall not collect or attempt to collect any money or any other form of indebtedness alleged to be due and owing from any person who resides or does business in this State without first registering under this chapter or receiving an exemption pursuant to this section.

(f) An exempt out-of-state collection agency shall be subject to sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19, and all remedies provided by this chapter and by any other law.

**[§443B-4] Application for registration.** The director shall prescribe the form of the application for registration. Each application shall be accompanied by the appropriate fees and the bond or bonds required by section 443B-5.

**[§443B-4.51] Certificate of registration.** Each certificate of registration shall be in a form prescribed and signed by the director, and shall be issued in the name of the department.

**§443B-4.52 Notice of termination of business.** (a) Not less than sixty days before a collection agency terminates its business operations in the State, the registrant shall transmit a statement to the director and to each of the agency's clients indicating:

- (1) That the registrant intends to terminate business in this State;
- (2) The effective date of the termination; and
- (3) That prior to the termination, the registrant shall lawfully expend or disburse all funds acquired in the course of business.

(b) If the registrant intends to transfer its client accounts to another collection agency, the notification shall also include:

- (1) The name, address, telephone number, and registration number of the purchasing agency, and the purchasing agency's principal collector in this State to whom the accounts will be assigned; and
- (2) The date on which the purchasing agency intends to begin servicing the accounts transferred by the terminating agency.

(c) Registration is not canceled until the director has received the notice of termination, the terminating collection agency's registration, and if applicable, verified the validity of the purchasing agency's registration.

**[§443B-4.53] Termination of business and surrender of certificate of registration.** Within ten days after termination of the business, the registrant shall surrender the certificate of registration to the director.

**[§443B-4.54] Notification of change.** Every collection agency shall notify the director in writing of any material change at any time during the application process or the period of registration.

**[§443B-4.55] Single act; evidence of practice.** Evidence that a collection agency has committed any act which is prohibited by this chapter shall be sufficient to justify the remedies set forth in this chapter, without proof of a general course of conduct.

**[§443B-4.56] Transfer of registration.** No registration, including the rights, privileges, and obligations thereof, shall be assigned, sold, leased, encumbered, or otherwise transferred, voluntarily or involuntarily, directly or indirectly, including by transfer of control of any collection agency, whether by change in ownership or otherwise, except upon written application to and approval by the director. The form of the application shall be prescribed by the director.

**§443B-4.57 Fine, revocation, suspension, termination, denial of registration, renewal of registration, or restoration of registration.** In addition to any other actions authorized by law, the director may fine any agency, revoke or terminate any registration, suspend the right of the registrant to use the registration, or refuse to renew or restore a registration for any cause authorized by law, including but not limited to the following:

- (1) Dishonesty, deceit, fraud, or gross negligence in conducting business as a collection agency;
- (2) Advertising by means of false and deceptive statements or by statements which tend to deceive or defraud;
- (3) Advertising or acting as a collection agency without a current and active certificate of registration issued under this chapter;
- (4) Violation of any provision of this chapter or the rules adopted pursuant thereto;
- (5) Commingling of clients' funds or other property;
- (6) Breach of fiduciary duty;
- (7) Failure to notify the director in writing of any material change in information; and
- (8) Providing false or misleading information at the time of application or during the time of registration.

**[§443B-4.58] Biennial renewal requirement.** (a) Each collection agency shall renew its registration by June 30 of each even-numbered year.

- (b) When renewing its registration, any agency shall submit to the director the following:
  - (1) An application on a form prescribed by the director;
  - (2) Satisfactory evidence that the collection agency is bonded as required by section 443B-5;
  - (3) A certificate of good standing or a certificate of authority issued by the business registration division, if the applicant is a corporation, partnership, or joint venture;
  - (4) The name and business address of the applicant's principal collector who is authorized to directly manage and control the daily operations of the applicant's Hawaii office; and
  - (5) A renewal fee in the amount specified by rule.

(c) Failure on the part of a collection agency to renew its registration as provided in subsection (a) shall cause the registration to be forfeited; provided that the director may make an exception for good cause shown.

**§443B-4.59 Restoration of forfeited registration.** (a) A forfeited registration may be restored by submitting an application provided by the director and by paying a delinquent renewal fee and a restoration fee in the amount specified by rule.

(b) Failure to restore a forfeited registration within sixty days of forfeiture shall cause the registration to be terminated.

(c) The director may extend the sixty day limitation for good cause shown.

(d) Upon termination of registration, the collection agency shall cease to do business.

**[§443B-4.60] Collecting without a registration.** Any collection agency whose registration has been terminated but continues to conduct business as a collection agency shall be engaging in an unregistered activity, and any agency so engaged, and any employee or agent of the agency who engages in an unregistered activity, shall be subject to the sanctions provided in this chapter. Nothing in this chapter shall be deemed to limit or prohibit other available civil or criminal actions against an agency engaged in an unregistered activity or any employee or agent of the agency engaged in an unregistered activity.

**§443B-4.61 REPEALED.**

**[§443B-4.62] Audits.** (a) When the director has reasonable cause to believe that a registrant created deficiencies or other problems in accounts which hold funds or other forms of payment collected on behalf of a complainant, the director may order an audit of the account or accounts, or an unannounced verification of the account's cash balance. The audit or verification shall be conducted by a certified public accountant, public accountant, or other designee of the director.

(b) If an audit or unannounced verification of an account ordered by the director reveals deficiencies or other problems in accounts which hold client funds and other forms of payment, the cost of the audit or the verification shall be paid by the collection agency. If an audit or unannounced verification of an account ordered by the director does not reveal deficiencies and problems in accounts, the cost of the audit or unannounced verification shall be paid by the complainant. Failure of a collection agency to pay for an audit or unannounced verification within thirty days of receipt of the billing statement shall result in suspension of the agency's registration until payment is made.

**[§443B-4.63] Furnishing deceptive forms.** It is unlawful for any person who is not a registered collection agency to design, compile, or furnish any form knowing that the form could be used



to create a belief in a debtor that the person who designed, compiled or furnished the form is a collection agency.

**§443B-5 Bond.** (a) Each collection agency shall file and maintain with the director a bond in the penal sum of \$25,000 for the first office in this State and \$15,000 for each additional office in this State.

(b) All bonds required by this section shall be issued by a surety company authorized to do business in the State, and shall run to the State. The bond shall be conditioned that the collection agency faithfully, promptly, and truly shall account and pay within thirty days after the calendar month, to its clients the net proceeds due on all collections made during the calendar month. The bond shall be conditioned further that the collection agency will comply with all requirements of this chapter or any other statute now in force or hereafter enacted with respect to the duties, conduct, obligations, and liabilities of collection agencies.

(c) In addition to any other remedy, the director or any person claiming to have sustained damage by reason of any breach of the conditions of the bond may bring action on the bond for the recovery of any damages sustained therefrom. The liability of the surety shall not exceed the amount of the bond issued to the collection agency for which the bond was issued.

(d) The bond shall be continuous in form and remain in full force and effect unless terminated or canceled by the surety. Termination or cancellation shall not be effective, unless notice thereof is delivered by the surety to the director and the collection agency at least sixty days prior to the date of termination or cancellation.

(e) Failure, refusal, or neglect of a collection agency to maintain in full force and effect a bond as required by this section shall cause the automatic suspension of the registration of the collection agency effective as of the date of expiration, termination, or cancellation of the bond. The director shall not reinstate the affected registration until satisfactory proof of bond coverage is submitted to the director as required by this section. Failure to effect a reinstatement of a suspended registration within sixty days of the expiration of the requirements of registration shall cause it to be forfeited, thereby forfeiting all registration and biennial renewal fees. A collection agency, within fifteen days after receipt of the notification of the registration forfeiture, may request an administrative hearing to review the forfeiture pursuant to chapter 91.

(f) Upon expiration, termination, or cancellation of the bond, the collection agency shall cease to do business as a collection agency in this State and the collection agency shall not resume business in this State until a bond as required in subsection (a) is submitted to the director.

**[§443B-6] Place of business; principal collector.** (a) A collection agency shall have and maintain a regular active business office in the State for the purpose of conducting collection agency business. The business office shall be open to the public during stated reasonable business hours.

(b) Every collection agency shall designate a principal collector to assume responsibility for the direct management and control of the daily operation of the office.

**§443B-7 REPEALED.**

**§443B-8 Manner in which records, funds, and other forms of indebtedness are to be kept by collection agencies.** (a) Every collection agency shall keep and maintain a permanent record or have immediate access to copies of the permanent record of all funds and other forms of indebtedness collected by it, and of all disbursements. Every collection agency shall maintain and keep a record of all clients' funds or have immediate access to copies of the record. No person willfully shall make any false entry in any collection agency record, or intentionally mutilate, destroy, conceal, or in any way dispose of any record.

(b) A collection agency shall not commingle the money of its clients with its own, but shall maintain a separate trust account for clients' funds in a federally insured financial institution.

**§443B-9 Collection, attorney's, or commission fees; exception.** (a) A collection agency shall not collect, or attempt to collect, any collection fee or attorney's fee or commission from any debtor; provided that an attorney's fee or commission may be collected after filing of a suit against any debtor and the fee or commission shall not be in excess of twenty-five per cent of the unpaid principal balance. All attorney's fees or commissions collected by a collection agency shall be remitted to the attorney and no portion of the collection shall be retained by the collection agency.

(b) This section shall not prohibit a collection agency from collecting, or attempting to collect, from a debtor, a commission authorized under a contract with the University of Hawaii pursuant to section 304-93(b), or a contract with the department of taxation pursuant to sections 231-13 and 231-26.

**§443B-10 Reports and payments by agency.** Every collection agency shall, within thirty days after the close of each calendar month, report and pay to its clients the net amount due to each client out of all collections made during the preceding calendar month.

In the event the gross amount due is paid to a client and the client fails to pay a collection agency any sums due under this section, the collection agency shall have, in addition to other remedies provided by law, the right to offset any moneys due the collection agency under this section against any moneys due its client.

**[§443B-10.5] Fiduciary responsibility.** Each collection agency shall be considered a fiduciary with respect to its clients and shall keep and disburse funds collected on its client's behalf in strict compliance with any agreement made with a client and with all applicable laws.

**[§443B-11] Action on collection agency bond.** If a collection agency has failed to account for and pay over the proceeds of any collection made, the client shall have, in addition to all other legal remedies, a right of action in the client's own name on the bond given pursuant to this chapter and the

total of all recoveries from the sureties shall not exceed the face of the bond. Upon entering judgment for plaintiff in any action on the bond required by this chapter, for more than any sum which may have been tendered in court by the defendant, the court shall include in the judgment reasonable compensation for the services of the plaintiff's attorney in the action.

**[§443B-12] Remedies not exclusive.** The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

**[§443B-13] Jurisdiction of courts.** The various district courts of the State shall have concurrent jurisdiction with the circuit courts in all criminal prosecutions for violations of this chapter.

**[§443B-14] Penalties.** (a) Violation of this chapter by an individual is punishable by a fine of not more than \$500.

(b) Violation of this chapter by persons other than an individual is punishable by a fine of not more than \$1,000. Any officer, agent, or employee of a collection agency who personally participates in any violation of this chapter by the collection agency is subject to penalties prescribed in subsection (a) of this section.

**§443B-15 Threats or coercion.** No collection agency shall collect or attempt to collect any money or other forms of indebtedness alleged to be due and owing by means of any threat, coercion, or attempt to coerce, including any conduct which is described as follows:

- (1) The use, or express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person;
- (2) The accusation or threat to falsely accuse any person of fraud or any crime or any conduct which, if true, would tend to disgrace the other person or in any way subject a person to ridicule or any conduct which, if true, would tend to disgrace the other person or in any way subject a person to the ridicule or contempt of society;
- (3) False accusations made to another person, including any credit reporting agency that a debtor or an alleged debtor has not paid a just debt, or threat to so make false accusations;
- (4) The threat to sell or assign to another the obligation of a debtor or an alleged debtor with an attending representation or implication that the result of the sale or assignment would be that the debtor or alleged debtor would lose any defense to the claim or would be subjected to harsh, vindictive, or abusive collection attempts; and
- (5) The threat that nonpayment of an alleged claim will result in the arrest of any person.

**[§443B-16] Harassment and abuse.** No collection agency shall oppress, harass, or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another in any of the following ways:

- (1) The use of profane or obscene language that is intended to abuse the hearer or reader;
- (2) The placement of telephone calls without disclosure of the caller's identity or with the intent to harass, or threaten any person at the called number; and
- (3) Causing expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communication, by concealment of the true purpose of the notice, letter, message, or communication.

**[§443B-17] Unreasonable publication.** No collection agency shall unreasonably publicize information relating to any alleged indebtedness or debtor, in any of the following ways:

- (1) The disclosure, publication, or communication of any false information relating to the indebtedness of a debtor or alleged debtor to any employer or the employer's agent;
- (2) The disclosure, publication, or communication of false information relating to the indebtedness of a debtor or alleged debtor to any relative or family member of the debtor or alleged debtor;
- (3) The disclosure, publication, or communication of any information by a collection agency relating to the indebtedness of a debtor or alleged debtor by publishing or posting any list of debtors, except for the publication of "stop lists" to point-of-sale locations where credit is extended, or by advertising for sale any claim to enforce payment thereof or in any other manner other than through proper legal action, process, or proceeding; and
- (4) The use of any form of communication by a collection agency to the debtor or alleged debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address, and phone number of the collection agency.

**§443B-18 Fraudulent, deceptive, or misleading representations.** No collection agency shall use any fraudulent, deceptive, or misleading representation or means to collect, or attempt to collect, claims or to obtain information concerning a debtor or alleged debtor, including any conduct which is described as follows:

- (1) The use of any company name while engaged in the collection of claims other than the true name of the collection agency;
- (2) The failure to disclose clearly:
  - (A) In the initial written and initial oral communication made to collect, or attempt to collect, a claim or to obtain, or attempt to obtain, information about a debtor or alleged debtor that the collection agency is attempting to collect a claim and that any information obtained will be used for that purpose; and
  - (B) In subsequent communications that the communication is from a debt collector;

provided that this paragraph shall not apply to a formal pleading made in connection with a legal action;

- (3) Any false representation that the collection agency has in its possession information or something of value for the debtor or alleged debtor that is made to solicit or discover information about the debtor or alleged debtor;
- (4) The failure to disclose clearly the name and full business address of the person to whom the claim has been assigned for collection or to whom the claim is owed at the time of making any demand for money;
- (5) Any false representation or implication of the character, extent, or amount of a claim against a debtor or alleged debtor, or of its status in any legal proceeding;
- (6) Any false representation or false impression that any collection agency is vouched for, bonded by, affiliated with, or an instrumentality, agent, or official of, this State or any agency of federal, state, or local government;
- (7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval;
- (8) Any representation that an existing obligation of the debtor or alleged debtor may be increased by the addition of attorney's fees, investigation fees, service fees, and any other fees or charges when in fact the fees or charges may not legally be added to the existing obligations; or
- (9) Any false representation or false impression about the status or true nature of, or the services rendered by, the collection agency or its business.

**[§443B-19] Unfair or unconscionable means.** No collection agency shall use unfair or unconscionable means to collect or attempt to collect any claim in any of the following ways:

- (1) The seeking or obtaining of any written statement or acknowledgment in any form that a debtor or alleged debtor's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for these necessities;
- (2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a debtor or alleged debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor or alleged debtor is not legally obligated to make the affirmation;
- (3) The collection of or the attempt to collect from a debtor or alleged debtor all or any part of the collection agency's fees or charges for services rendered;
- (4) The collection of or the attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless the interest or incidental fee, charge, or expense is expressly authorized by the agreement creating the obligation and legally chargeable to the debtor or alleged debtor; or unless the interest or incidental fee, charge, or expense is expressly authorized by law; and

- (5) Any communication with a debtor or alleged debtor whenever it appears that the debtor or alleged debtor is represented by an attorney and the attorney's name and address are known.

**[\$443B-20] Unfair competition, unfair or deceptive acts or practices.** A violation of this chapter by a collection agency shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce for the purpose of section 480-2.

**[\$443B-21] Severability.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.